

This list provides comments, edits and suggested changes to the 1<sup>st</sup> draft text of the Grove CC&R pdf document. Much of this added or changed text came from a previous 2015 Adam-Sterling draft CC&R document for another HOA. In general, only Sections requiring a change or added text are listed. Text highlighted in yellow is suggested text to convey the intent of a proposed modification or addition to the Section or Article, which we understand is still subject to the requirements and limitations of the CA Civil Code, etc. Where appropriate, we also provide (*in italics*) the intent or added explanation if it is not clear what the possible needed changes or additions to the text might be.

These changes were made.

#### **Incorrect assumptions that need to be addressed:**

1. Air conditioning is referenced as a standard component of units (1.21, 1.52, 3.6f, etc.). The 1<sup>st</sup> draft mentions 'air conditioning' 14 times. This tends to convey a false impression that air conditioning equipment, ducts, and utility lines are a common, standard feature of the complex. Air conditioning is only present as an expressly approved Unit Improvement for a medical necessity. In contrast, the original CC&R's mention 'air conditioning' only twice and this was to a) prohibit installation unless approved by the Board, and b) exclude such Unit improvements from any HOA responsibility. We need to rewrite various provisions and/or delete '*and air conditioning*', so it is not commonly mentioned (except as restricted under Section 5.4), as any related 'air conditioning' elements would be covered by the rules governing Unit Improvements, or under similar phrases like "*and other similar lines, pipes, cables, ducts, etc.*". See Definition 1.52. The problem is highlighted with 3.6f and/or 3.6g.

These changes were made.

2. Parking and storage of vehicles are assumed to be equivalent. For us, this is not correct. Storage of unregistered or non-operational vehicles is generally not permitted. See Definition 1.36.

Security systems and intercoms should be removed throughout the document.

3. Continued reference to 'security systems' or intercoms (e.g., 3.6g, 4.12, etc.). These do not exist. We do have access control systems to the pool area and exercise room, as well as the entry gate system, but these should not be referred to as 'security systems'.

See revisions to Section 4.3e

4. The 1<sup>st</sup> draft contains a paragraph on HOA responsibility to maintain the Common Areas (4.5). The expected paragraph to maintain Buildings and Other Improvements in this section seems to be missing.

See my response to this in the pages below.

5. We still prefer something like our original Occupancy Restriction for provision 7.13. We understand that this *may* be "considered discriminatory". However, this restriction is: a) the original provision that has been in force since 1985 and so is acceptable to all current Owners; b) has not been contested during this 35+ year period; and c) the law provides no minimum room size for bedrooms so there is no guarantee that any bedroom can legitimately or adequately house up to 3 adults (i.e., 2 persons per bedroom plus one). If it has never been contested, why should we voluntarily acquiesce to a less restrictive provision? It should be up to an Owner who knowingly wants to violate this existing restriction to contest it, and if he or she succeeds, it will then be changed.

***Given the current pandemic, it can also be strongly argued that the original restriction is reasonable for both health and safety reasons,*** as anytime a Resident who becomes infected with a highly contagious disease must presumably self-quarantine in a single bedroom. This would result (with your alternative text) in up to 6 remaining adults confined to two bedrooms for a 3-bedroom unit, or 4 adults to one bedroom for a 2-bedroom unit, or 2 adults to the living room for a 1-bedroom unit. The Grove is also in a university town. Your text would theoretically allow up to 7 adult college students to occupy a 3-bedroom unit, or 5 adults in a 2-bedroom unit, or 3 adults in a 1-bedroom unit, which is not likely what most Owners want to allow.

## INTRODUCTORY DECLARATIONS:

Shouldn't this be:

...condominium development known as "Eucalyptus Grove Owners Association"?

No. See further discussion of this below

## ARTICLE 1: DEFINITIONS

Adding "only" is redundant on the one hand, and not technically true on the other. Balconies can also be accessed via a latter.

1.6 "Balcony" refers to a balcony which is attached to a Unit and accessible **only** through the Unit of which it is appurtenant.

City can only refer to the City of Goleta because that is the city the development is in, so this definition is not necessary.

1.10.1 "City" means the City of Goleta, the city in which the Property is located.

1.16 "Condominium Plan" collectively means the diagrammatic descriptions of the Development that identify the boundaries of Units, some or all of the Exclusive Use Common Areas and the Common Area, **as recorded in the Office of the County Recorder of Santa Barbara County and any amendments thereto.**

County can only refer to the County of Santa Barbara because that is the county the development is in. So this definition is not necessary.

1.16.1 "County" means the County of Santa Barbara, the County in which the Property is located.

1.19 "Development" means that certain residential common interest development known as "Eucalyptus Grove Owners Association" and located at 7602-7640 Hollister Avenue, Goleta, California.

The "Association" is a corporation made up of members and the Board. The Association's name is not the same as the property name. The property is probably referred to as either Eucalyptus Grove or Grove HOA.

1.21 "Exclusive Use Common Areas" means those portions of the Common Area, **as designated in the Condominium Plan**, which serve a single Unit, including but not limited to Balconies, Patios, Heater

Area, heating, ventilation and/or air conditioning, and Utility Lines, whether located inside or outside the boundaries of the Unit. Any Utility Line or portion thereof is deemed to "serve a single Unit" when its removal would interrupt service of only a single Unit.

Rules, restrictions, and limitations do not belong in the definitions, they must be stated in Article 3 maintenance responsibilities or Article 7 use restrictions.

**a. Limitations:** Front Door Steps, Landings, Mid-Landings that may be shared or not, but are otherwise accessible from the Common Area, generally remain subject to certain use and safety access limitations of the Common Areas, regardless if portions thereof may be designated as Exclusive Use Common Areas appurtenant to some but not all Units.

1.22 "Heater Area" refers to a specific exclusive appurtenant easement for the purpose of maintaining, servicing and replacing the furnace located above the interior ceiling of each Third Floor Unit. See Definition 1.51 ('Unit').

**The full definition of the easement should appear with the definition of 'Unit' (1.51) as that is where most people will expect to find Unit 'easements'.**

The easement is not relevant to this definition. In other words, the heating area is part of the building regardless of whether a members has a easement or not.

1.36 "Parking Areas" includes those portions of the Development used for the parking of vehicles. **Only authorized, registered, licensed and operational vehicles can be parked. Unless expressly authorized by the Board, storage of unregistered or non-operational vehicles is not permitted.**

This definition refers to a portion of the development. The highlighted language is a rule, condition or restriction and does not belong in this definition.

I revised this section, but the definition of the Unit comes from the Condo Plan and cannot be changed discretionarily.

#### 1.51 "Unit"

a. *Boundaries.* The boundaries of each Unit are the unfinished interior surfaces of the perimeter walls, floors, ceilings, windows, and doors, together with any exterior storage, laundry or water heater enclosures appurtenant to the Unit, and utility lines for which the Unit has exclusive use.

c. *Exclusions.* The following are not part of an individual Unit and are deemed to be part of the Common Area: Any bearing walls, columns, horizontal supports, vertical supports, floors, ceilings, foundations, patio walls, steps and railing, exterior lighting fixtures, pipes, ducts, flues chutes, conduits, wires, equipment, mechanical devices, security system components, and Utility Lines that service more than one Unit, except for the outlets thereof when located within the Unit and that either (a) are located within any Unit or (b) pass through any portion of any Unit.

It doesn't make sense to include this easement here with all other easements are stated in Article 2

d. *Easements.* The easements for patios or balconies are shown and defined in the Condominium Plan and shall be for the exclusive use and enjoyment of the Owner of the Unit to which it is appurtenant for all purposes not inconsistent with the provisions, restrictions and limitations contained in this Declaration and in the Bylaws, subject, however, to the right of the Association to service, maintain, landscape and otherwise care for the Common Area. In addition, each third floor Unit has an exclusive appurtenant easement over the portion of the Common Area located immediately above the interior ceiling of the Unit for the purpose of maintaining, servicing and replacing the furnace which serves the Unit. This easement is shown and defined in the Condominium Plan and shall be for the exclusive use and enjoyment of the Owner of the Unit to which it is appurtenant for the limited purposes set forth herein subject to the right of the Association to service, maintain and otherwise care for the Common Area.

This definition not consistent with the structure and organization of these restated CC&Rs, so I can't add it.

1.51.1. "Unit improvements" means those improvements, changes, modifications, or alterations to a Unit that are different from the original, as-built Unit specifications.

This definition not consistent with the structure and organization of these restated CC&Rs. Also, "Improvement" has its own definition already, so adding this will confuse the term.

1.52 "Utility Lines" means sewer lines, storm drains, water pipes, electricity lines, gas lines, telephone lines or cables, television cables, satellite dish cables, heating and air conditioning conduits, heating and air conditioning ducts, heating and air conditioning flues, fiber optic cables, data lines, community security systems, and other similar lines, pipes, cables, ducts, flues, and conduit pipes.

## ARTICLE 2: MEMBERSHIP RIGHTS AND OBLIGATIONS

2.7 **Minor Encroachments or Encroachment Easement:** Members agree that minor encroachments of the Common Area on Units, or of Units on the Common Area, or on other Units are permitted and that valid easements for the encroachments may exist. Such minor encroachments are not encumbrances on either the Units or the Common Area. However, in no event shall a valid easement or right of use exist in favor of an Owner or a Unit if the encroachment occurred due to willful misconduct of the Owner, or resulted from the Owner's violation of or noncompliance with any provision of this Declaration, or other Governing Document.

## ARTICLE 3: MEMBERSHIP OBLIGATIONS

3.4 **Obligation to Provide Telephone Number.** Members and Tenants must provide the Association with the current telephone numbers at which they can be reached in an emergency. To facilitate non-

emergency communication, Members and Tenants shall also provide the Association with valid email addresses.

This is inconsistent with the law. See Civil Code § 4041(a) which gives the members the option to provide their email address to the Association.

3.6 **Duty to Maintain, Repair, and Replace.** A Maintenance Responsibility Chart is attached as Exhibit "A" to these CC&Rs. Except for those duties specifically assigned to the Association by these CC&Rs, Members must, at their sole expense, maintain and repair their Units and maintain, repair and replace the equipment, appliances and fixtures therein, maintain, repair, and replace improvements to their Units, as well as Exclusive Use Common Areas servicing their Units, and any utility lines for which the Unit has exclusive use.

We don't recommend this change. It is unnecessary because Members are responsible for everything within the boundaries of their unit no matter if that is equipment, appliances, fixtures, installations, utility lines, outlets, upgrades, mechanical devices and equipment, internal or portable A/Cs, etc. Specifying certain components tends to create loopholes.

f. **Heating and Air Conditioning.** All mechanical equipment, heating and ~~portable~~ internal air conditioning equipment, heat exchangers, drip pans, valves, thermostats, compressors, control equipment, and any other mechanical equipment exclusively servicing the Unit. Members are responsible for any damage to the Common Areas caused by their air conditioning units.

**Again, this provision is worded such that Air Conditioning is assumed to be a common component of all Units. The requirement to maintain, repair & replace air conditioning equipment should be covered as a Unit Improvement. However, this provision can and should be reworded and/or expanded, or broken out as provision 3.6 g(?) to include:**

g. **External Air Conditioning Units [and Components]:** Only air conditioning equipment expressly approved by the Board for a medical necessity may be installed and operated exterior to the Unit. This includes window air conditioners, or compressors and related lines and equipment. As a Unit improvement, Members are solely responsible for maintaining, repairing, or replacing any and all air conditioning equipment internal or, if authorized, external to the Unit, and related drip pans, valves, thermostats, compressors, and control equipment, as well as any damage to the Common Areas caused by their air conditioning units.

Adding this is confusing since we took air conditioning out everywhere else in the document.

g. **Electrical, Telephone, ~~Security~~ Internet/Data and Cable.** All telephones, telephone lines, internet/data lines, fiber optic lines, cable lines, electrical wiring, light fixtures, electrical outlets, circuit breakers, and switches, locks, and other equipment or utility lines exclusively servicing a single Unit.

internet and data lines includes fiber optic lines; so fiber optic lines does not need to be called out.

h. **Plumbing and Gas.** All plumbing equipment, including plumbing fixtures, toilets, faucets, bathtubs, tub and shower valves, shower pans, drain lines, sewer lines, water lines, angle stops, garbage disposals, water heaters, etc., and any exterior water heater enclosures, which exclusively service the Unit. All gas lines exclusively servicing the Unit. The exception is replacement of structural plumbing that may exist beneath the building slab foundation.

i. **Washers and Dryers.** All plumbing, ducts, Utility Lines and any other equipment or utility lines exclusively service a Unit's washing machine and dryers, including lines, vents, and exhaust fans.

The water heater enclosures if not part of plumbing and gas. Also, if the water heater storage closet is on the patio or balcony, then maintenance obligations for it belong in the Patios and Balconies article.

l. **Fireplaces.** Fireplaces appurtenant to Units, including fireplace mantles, fireboxes, and flues are the Unit Owner's responsibility to maintain, repair, and replace. The chimney and chimney cap are the Association's responsibility to maintain, repair, and replace. ~~Members must have their flues cleaned on a regular basis and arrange with the Association for roof access. If the Association retains a chimney sweep to clean all flues, Members with fireplaces must cooperate with the cleaning project and reimburse the Association for their portion of the costs.~~ **[All fireplaces are operated with only natural**

**gas, no wood burning. It is our understanding that such fireplaces and flues do not require cleaning.]**

From time to time, the Association may inspect fireboxes in Units. If it is determined that a Member's firebox needs repair or replacement, the Member must immediately cease using the firebox and have it repaired or replaced at the Unit Owner's expense or eliminated altogether (and walled over) so it cannot be used.

Even if you are told they don't require cleaning, it is better to have the obligations stated in this section just in case an issues comes up.

o. Skylights. **As a Unit Improvement requiring prior approval from the Board for installation**, Members must maintain, repair, and replace any skylights that benefit their Units.

The fact that skylights require Board approval does not belong in this section. Also Article 5 already states board is approval for any exterior modifications and installation of a skylight is an exterior modification and a modification of the common area (roof).

#### **ARTICLE 4: DUTIES OF THE ASSOCIATION**

4.2 Entry Gates. Vehicular access to the development is restricted by entry gates located at the entrance on Hollister Avenue. These entry gates are part of the Common Area and the Association shall be responsible for their operation and maintenance. **In addition, the Association shall periodically review the effect of the gates on traffic circulation. In the event that the operation of the gates is causing vehicles to stack up onto Hollister Avenue causing traffic circulation problems, the Association shall adjust the operation of the gates to eliminate the problem.** ***This text was left over from the original 1985 Grove CC&R's, but it is not and never has been a problem as the Association has its own exit lane off Hollister Avenue.***

This section has been removed and "entry gates" added to 4.3.

#### **4.5 Maintain Common Areas and Buildings.**

The Buildings are part of the Common Area and not separate from it, so it doesn't make sense to add this to the title of this section.

a. *Common Areas*. Unless otherwise provided in these CC&Rs, including the Maintenance Responsibility Chart, the Association must maintain, repair, and replace the Common Areas including, but not limited to, swimming pool, spa, sauna, pool house, meeting room, exercise room, carports, car wash area, landscaping, public area and street lighting, private streets, sidewalks, parking areas, fences, perimeter walls, bridge, mail kiosks, trash enclosures, access control systems, and entry gates. This includes Utility Lines and fixtures that service these Common Areas.

***The following section on HOA responsibility to maintain buildings is completely missing.***

b. *Buildings and Other Improvements*: The Association shall be responsible for the repair and maintenance of the exteriors, foundation, structural members, roofs and common utility lines of the buildings containing each Unit and other exterior structures, and for the painting of the exterior of Unit buildings and other exterior structures. If an Owner does not maintain or repair his Unit as required, the Association will cause those repairs to be made at the Owners expense.

4.12 Utility and Cable Easements. The Association is hereby granted easements to enter into Units as is necessary or prudent to: (i) install, maintain, repair, and replace Common Area Utility Lines; and (ii) install, operate, maintain, repair, and replace transmission lines and other facilities for a community television system, high-speed internet lines, community security systems, or other similar systems; provided that any damage to a Member's Unit caused by such work must be repaired to original construction building standards at the Association's expense and in a timely fashion.

4.22 Vendor Contract Limitations: Except for the contracts listed below or as otherwise provided herein, the Association is prohibited from entering into any contract for services which binds the Association for a period for more than two (2) years one (1) year without Membership Approval. The term of any such service contract shall not exceed one (1) year and shall be terminable by either party



with or without cause and without payment of a termination fee upon not more than thirty (30) days' written notice.

a. *Public Utility Contract.* A contract with a public utility company, if the rates charged for the materials or services are regulated by the Public Utilities Commission. However, the term of the contract must be for the shortest term for which the supplier will contract at the regulated rate.

b. *Fire and Burglary.* Contracts for terms up to three (3) years to lease or service burglar and/or fire alarm equipment or provide protective services.

c. *Bulk Cable Service.* Contracts for terms up to five (5) years to provide cable, internet, or satellite communications service.

d. *Insurance.* Contracts for insurance, if the policies do not exceed three (3) years duration.

e. *Reserve Studies.* Contracts for up to three (3) years for reserve studies.

**Not sure we want to allow contracts longer than 1 to 2 years for anything.**

Section 5.5.1, pg. 21 of the current CC&Rs includes the following restriction on the term of service contracts, "Except as otherwise provided herein, the term of any such service contract shall not exceed one (1) year and shall be terminable by either party with or without cause and without payment of a termination fee upon not more than thirty (30) days' written notice."

4.26 Right of Force Sale. If the health and safety of Homeowners are jeopardized by the condition of a Unit, how the unit is being maintained, or by illegal activities conducted from a Unit, and the Owner refuses to mitigate, correct or remedy these conditions, the Association has the right to take possession of the unit and sell it, provided the Board first seeks and wins approval for this forced judicial sale of the condominium.

The Association's rights to take enforcement action and its remedy's are stated in other Articles and are not appropriate here.

## ARTICLE 5: ARCHITECTURAL CONTROL

This section already says that unapproved renovations are prohibited, so adding the word "prohibited" as highlighted below is redundant and unnecessary

5.1 No Improvements or Alterations Without Approval. No Renovations by or on behalf of a Member in or to any Unit, Common Area, or Exclusive Use Common Area are permitted until plans and specifications have been submitted to and approved in writing by the Architectural Committee or Board. Any Renovations which are prohibited, unapproved, different from those approved by the Committee, or done without required governmental permits, are automatically deemed disapproved and the Member must promptly remove or correct the disapproved Renovations to comply with the Architectural Standards, the Architectural Committee's, or Board's approvals, and governmental requirements. This includes any such changes, modifications or improvements deemed a health, safety, or persistent nuisance to Residents.

We don't recommend adding language that qualifies a rules because this actually recreates loopholes. This change was not made.

5.4 No Exterior Installations. Installations of any kind, including but not limited to, trellises, awnings, electric lines, telephone lines, television antennas, satellite dishes (except as permitted by law), machines, filtration systems, or air conditioning units, on the exterior of the Unit or that protrude through the walls or the roof, or that are located in the Common Area, are prohibited except as authorized by the Architectural Committee or the Board.

### 5.7 Submission of Plans and Approval Process.

a. Plans and specifications in accordance with the Association's Governing Documents, describing the proposed Renovations, must be submitted to the Architectural Committee, Board or Property Manager by personal delivery, certified mail, or by email if receipt is acknowledged.

The statement "by email if receipt is acknowledged" is inconsistent with the law. See Civil Code §4035(b)

**5.19 No Right to Combine Units.** No Member is permitted to combine Units. Subject to the applicability of any law restricting the partitioning of Units and the Common Area, or Combining of Units is not permitted, without prior written Board approval. Once combined: (i) the Percentage Interest in the Common Area allotted to the combined Units will equal the sum of the Percentage Interests in the Common Area of each of the combined Units; (ii) the Assessments due and owing on the combined Units will equal the sum of the Assessments levied against each of the respective Units so combined; and (iii) the Owner of the combined Units will continue to have the same number of votes assigned to the Units before they were combined.

*If combining or dividing Units is not permitted, there should be no need to provide for what may happen if and when they ever are.*

**5.20 No Right to Divide Units.** Subject to the applicability of any law restricting the partitioning of Units and the Common Area, No Member is permitted to divide any Unit or change the number of bedrooms, or number of kitchen areas within a Unit. ; provided, however, that once two (2) or more Units have been combined, the Members owning such combined Units are permitted to restore them to their original dimensions and footprint only after receiving prior written Board approval.

## ARTICLE 6: BALCONIES AND PATIOS

I will make this change in draft 3.

We cannot add "professional standards" because there is no legal definition for "professional standards."

**6.1 Member Maintenance of Balconies and Patios.** Members must, at their sole expense, maintain, service and repair to professional standards their Balconies and Patios, including attached water heater, laundry or storage enclosures, as described below and as indicated on the Maintenance Responsibility Chart.

Members can refer to the Maintenance chart to see that they are responsible for these enclosures.

a. *Clean and Sanitary.* Members must keep their Balconies and Patios in a clean and sanitary condition. However, any water used in cleaning Balconies must not unreasonably spill over the edge of the Balcony onto other Units or the Common Area.

b. *Storage.* Balconies and Patios are not intended for storage. Only appropriate outdoor patio furniture is allowed on the patio or balcony area of the Units.

See Section 6.7 and 6.8, this doesn't belong under 6.1.

c. *Balcony/Patio Doors.* Members must maintain, repair, and replace their Balcony and Patio doors, and doors to any areas located off of the Balcony or Patio, including water heater, laundry or storage enclosure doors, door casings, thresholds, flashing, weather stripping, waterproofing, caulking, door guides, and any other related hardware and sealants.

It is not necessary to qualify "door." Also the Maintenance Chart provides these details.

d. *Floors and Surface Finishes.* Members must also maintain, repair, and replace surface finishes and waterproofing of the floors of the Balconies (and Patios where present).

It is unnecessary to state "were present" because either they have a patio floor or they don't. If they don't then this section doesn't apply.

**6.2 Association Maintenance of Balconies and Patios.** Excluding Member obligations provided for in this Article, the Association must maintain, repair and replace exterior surfaces, railings, and structural components of Balconies. The Association must also maintain, repair, and replace surface finishes and waterproofing of the floors of the Balconies and Patios. The Association shall also repair or replace as needed as-built surface finishes and waterproofing of the floors of the Balconies if the Balcony floor is repaired or replaced for structural reasons. Subject to the notice provisions in these CC&Rs under "Right of Entry," the Association has the right to enter upon any Balcony or Patio for maintenance, repair, or replacement for which the Association is responsible.

The Association is free to replace the surface finishes and waterproofing if it repairs or replaces the floors for structural reasons, but there is no reason why it should be required to.

**6.4 Balcony and Patio Alterations.** Members shall not have the right to paint or alter their Balconies or Patios without the prior written approval of the Board or Architectural Committee. No fences, awnings,

ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure except those that are installed in accordance with the original construction of the development, and any replacements thereof, without the authorization and approval of the Board.

See Section 6.9 which applies to any fences awnings, screens, sunshades and walls.

6.11 Balcony Weight Limitations and Storage. Members are not permitted to place unreasonable weight loads on any Balcony, or use Balconies and Patios for storage. The number and size of plants may be regulated by the Rules and Regulations. No storage containers, cabinets, or shelves, and no refrigerators, freezers, or other appliances are permitted on Balconies or Patios.

Partially revised, also see Section 6.7.

6.14 Lighting. Exterior lighting, if any, shall be of low intensity as defined by the applicable County or City Building and Zoning department.

Exterior lighting is something that should require architectural approval. So this is already covered in Article 5.

## ARTICLE 7: GENERAL RESTRICTIONS

We cannot acquiesce to keeping something that we know is illegal in the CC&Rs, but we can remove this entirely. The Board can adopt a rule, which is

7.13 Occupancy Restriction. [As per original, recorded CC&R's], No more than two (2) Persons may reside in any one-bedroom unit as permanent residents. No more than four (4) Persons may reside in any two-bedroom unit as permanent residents. The maximum occupancy for a three-bedroom unit shall be five (5) Persons as permanent residents. For purposes of this restriction, "reside" as permanent residents means to use or occupy any Unit for more than thirty (30) consecutive days and/or more than sixty (60) aggregate days, whether or not consecutive, in any one calendar year. The birth or adoption of a child that may otherwise exceed the occupancy limitation of the Unit is not considered a violation of this restriction. Maximum occupancy of any Unit shall not violate any other provision of this Declaration (e.g., Section 10.5), or other Governing Document, or impact of the otherwise quiet enjoyment of other Units. *Along with other remedies provided for in these CC&Rs, the Board may impose an occupancy surcharge per Person residing in a Unit in excess of the occupancy restriction until the violation is deemed corrected.* **Is this allowable?**

***IF the above provision is implemented as requested, or if the proposed less restrictive provision for maximum occupancy is adopted, then no grandfather clause is required since either there is no effective change or all Units would be already in compliance.***

Where the number of Persons residing in a Unit, as of the date these CC&Rs are recorded, exceeds the maximum number permitted in the this Section, the Persons then residing in the Unit ("Permitted Residents") are permitted to continue residing there; provided, however, any Permitted Residents who cease to reside in the Unit can remove this entirely and the Board can adopt a rule, which is much easier to amend if and exceeds the maximum permit when necessary.

We can't acquiesce to keeping something that we know is illegal in the CC&Rs, but we can remove this entirely and the Board can adopt a rule, which is much easier to amend if and exceeds the maximum permit when necessary.

7.15 Residential Use. Using a Unit, or permitting a Unit or any portion of it, to be occupied or used for any purpose other than a private residential dwelling is prohibited. Units must not be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Residents may use a portion of their Unit as a home office, provided that (1) the primary use of the Unit remains as a Residence, (2) no business advertising or signage is used in connection with the home office use, (3) package deliveries are kept to a minimum, (4) the secondary commercial operation meets the requirements and approval defined by Article II of Chapter 35 of the Santa Barbara County Code, (5) no commercial permit is required by the City of Goleta for its operation, and (6) no customers, clients or patients visit the Unit. The Board may adopt additional Rules regarding the use of such home offices.

We do not recommend this change because (1) local laws change more frequently than your CC&Rs are updated (2) members have to comply with the law whether or not it is stated in your CC&Rs,



7.20 Smoking and Vaping. All smoking, vaping, and use of e-cigarettes is **generally** prohibited [everywhere] in the Development [where its use can affect other people], whether in **or near** Units, **buildings and common area facilities**, the Common Areas, or any Exclusive Use Common Area, **except within specific, outside designated Smoking Areas**. "Smoking" means, but is not limited to, any practice by which a substance, whether tobacco, marijuana or any other substance, is burned for the purpose of inhaling its smoke. "Vaping" means inhaling water vapor to obtain nicotine, cannabis or any other substance. "E-cigarette" means an electronic device that vaporizes liquid nicotine, cannabis or any other substance. **The Board may adopt additional Common Area restrictions concerning Smoking, Vaping, and E-cigarette use, consistent with these CC&Rs.**

Buildings and facilities are Common Area, so no need to call them out specifically. The last sentence was added.

~~7.22 Spas, Hot Tubs and Saunas. No spa, hot tub, or sauna may be installed in any Unit without the written approval of the Architectural Committee or the Board. Such installations must conform to the Association's Architectural Standards. Spas, hot tubs, and saunas and are prohibited on Patios and Balconies.~~

Will remove the crossed out language for Draft 3.

7.23 Storage, Laundry and Water Heater Enclosures. **Storage, laundry, and water heater enclosure areas** may only be used as provided for in the Rules and Regulations. Under no circumstances may explosives, fireworks, or highly flammable or highly corrosive materials be stored in such areas. Members must keep their storage areas, laundry areas and water heater areas hazard-free at all times. Members must supply their own locks to secure their possessions and are responsible for insuring stored items against loss. **Washer and dryer appliances must fit within the laundry enclosure provided such that exterior enclosure doors will fully and properly close.**

~~7.28 Heater Area Modifications. Modifications to the Heater Areas are prohibited.~~ Replaced with:

7.28 Third-Floor Unit Easements. The exclusive appurtenant easement in third-floor Units for the purposes of servicing the heater area **requires that regular serviceable access be maintained.** As such, this easement above the interior ceiling **qualifies the purpose of this rule since the members have to approve it.**

The requested revisions states the same thing as "modifications are prohibited" just in a more complex way. Also, the CC&Rs do not need to qualify the purpose of this rule since the members have to approve it.

## ~~ARTICLE 8: LEASING AND OWNERSHIP LIMITATIONS~~

Prefer

## ~~ARTICLE 8: OWNER OCCUPANCY AND LEASING LIMITATIONS~~

The laws related to rental and lease restrictions changed in 2021. So, most of what is stated in Draft 2 is new to the document.

*We believe inclusion of an introductory declaration to this article documenting the historical precedent in the Governing Documents for some type of Owner Occupancy and Lease Limitation Requirements would be useful, helpful, and instructive. This way, the restated CC&R provisions of Article 8 can be perceived as a continuation of this historical precedent. In addition, the Board wishes to adopt added provisions for Rental Cap, Room Rental and a modified Minimum Lease Requirement of one (1) year for entire Units (No Owner Occupancy), but three (3) months for room rentals (with Owner Occupancy). This distinction between requirements with owner occupancy versus non-owner occupancy would seem to be facilitated if a provision requiring General Owner Occupancy is expressed and defined – even if this is only somewhat aspirational. This declaration could be something along the lines of:*

**General Owner Occupancy. In furtherance of the plan for the ownership, improvement and use of the Eucalyptus Grove; to enhance the value, desirability and attractiveness of the Development for**

the mutual benefit of the Members; and to facilitate insurance coverage for the Development, effective January 1st, 1990, an amendment to the Governing Documents was adopted and recorded by the Association to require, as defined or otherwise provided for in the amendment, that **"each Unit must have in residence at least one (1) owner of record"**. Owing to difficulties with legal enforcement and compliance with the amendment as originally adopted, the Association hereby replaces and restates the intent of that amendment with the following Owner Occupancy and Lease Limitation provisions:

8.2 Rental Cap. Only 30% of entire Units in the complex (or a maximum of 54 Units) may be rented at any one time.

25% of the most restrictive allowed by law. If you want to change it to 30%, let me know.

*This implies a target Owner Occupancy rate of at least 70% should be maintained as much as possible given the complexities of grandfathered Units that are still free to lease unrestricted.*

8.3 Room Rental. Each Owner may rent (either for consideration or for no consideration) under a written lease or other agreement one (1) bedroom, or up to two (2) bedrooms in a 3-bedroom unit, to one (1) Tenant or Lessee, and said lease shall not require the prior approval of the Board; provided, however, that no Owner may have more than one (1) such lease or other agreement with a Tenant in effect at any time, and no assignments or subleases are permitted. No Member shall lease a room in their Unit for an initial term of less than three (3) months. If the Tenant vacates the room after less than three (3) months, the Member may not re-lease the room in the Unit until the expiration of three (3) months from the date the Lessee moved into the room or rooms unless the Member applies for and receives a hardship exception from the Board. No Owner who leases a bedroom of their Unit to a Tenant may have more than the maximum number of persons residing in the Unit as stated in Section 7.13 (Occupancy limitation) of these CC&Rs. Each Owner who leases a bedroom of their Unit must be in residence at least ninety (90) aggregate days out of each year in which the lease agreement regarding the Unit is in effect.

8.4 No Transient Use. Units may not be rented for transient, hotel, fractional or similar purposes or any time-sharing arrangement under which occupancy rights for specific periods are distributed between two or more persons, or that require any short-term vacation rental permit from the City of Goleta to operate. No Unit may be advertised with Airbnb, VRBO, Flipkey, Homeaway, or by any other means, as being available for rent or lease for a period of less than three (3) months or in a manner that would suggest or imply the Unit or any portion thereof was available for rent or lease for a period of less than three (3) months.

8.5 No Time Sharing. Units may not be divided, used or conveyed on a time increment basis (commonly referred to as "time sharing"). The term "time sharing" is defined to include any agreement, plan, program or arrangement under which the right to use, occupy or possess a Unit or any portion of a Unit rotates among various persons, either corporate, partnership, individual or otherwise, on a periodically recurring basis.

8.6 Lease Requirements. Except for room rental with Owner Occupancy as provided for in Section 8.3, no Member is permitted to lease less than the entire Unit. The initial term of any lease must be at least twelve (12) months. If a Tenant vacates after less than twelve (12) months, the Member may not re-lease the Unit until the expiration of twelve (12) months from the date the Tenant moved into the Unit, unless the Member applies for and receives a hardship exception from the Board.

**8.7 Lease Addendum.** Any lease or rental agreement between Member and Tenant must be in writing. In addition, **except for lease agreements covered by Section 8.3 (Room Rental),** Member, Tenant, and the Association must execute a "Lease Addendum" supplied by the Association. For a lease, Member and Tenant must agree, at a minimum, to the following terms: (i) the lease is for the entire Unit; (ii) Member transfers any right to use Common Area facilities to the Tenant; (iii) no assignments or subleases are permitted; (iv) the lease is for not less than **twelve (12) months** and Member cannot re-lease the Unit if Tenant moves out before Tenant's **twelve (12)** month occupancy has been completed unless the Member applies for and receives a hardship exception from the Board; (v) Tenant agrees to comply with the Association's Governing Documents and be subject to the same disciplinary procedures and fines as Members; (vi) Member assigns rents to the Association if the Member becomes sixty (60) days delinquent in the payment of Assessments to the Association; (vii) Tenant must carry renter's insurance; (viii) Member grants the Association the power to institute an unlawful detainer action on his/her behalf for violation of the terms of the Lease Addendum; and (ix) if there is a conflict, the terms of the Lease Addendum supersede the terms of any other agreement between Member and Tenant. If a Lease Addendum is not executed as described above, Member and Association are nonetheless bound by the terms of this section as though the Lease Addendum had been executed by them.

**8.8 ~~Lease~~ Special Assessment.** In order to offset any increased costs of common area maintenance, utilities, and/or insurance attributable to occupancy by Tenants, **against each Owner who leases his/her/its Unit pursuant to Article** said special assessment shall be set annually by the Board.

Add this to your fee schedule. The CC&Rs already state that the Board can levy fees to offset costs so it does not need to be enumerated here.

**Section** You cannot prohibited reptiles, rodents or fish based on whether they are "usually domesticated." But you can prohibit poisonous and illegal pets, as is stated below.

**ARTICLE**

**are renumb** if you want to limited the number of birds to 2, do so in your rules because we are not sure it is legal to limit birds to 2 without a good reason. Dogs and cats are different because they impact the common area and other people. Birds, particularly small birds do not have much impact on the building or other people.

**9.1 Pet Limitation.** No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept within any Unit, except usual domesticated dogs, cats, and birds may be kept in Units as pets. No more than one (1) dog or cat and not more than two (2) caged birds may be kept as household pets within any Unit. Aquariums of 100 gallons or less are permitted to be maintained in Units with only non-poisonous, legal, aquatic creatures, excluding any snakes. No animal is permitted to be kept, bred, or maintained: (i) for any commercial purpose; (ii) in unreasonable numbers; or (iii) for any purpose that would involve any odor, noise, or other nuisance which would unreasonably disturb the use and enjoyment of any portion of the Development by other Members. The Board is permitted to adopt additional Rules and Regulations regarding the quantity, kinds and sizes of pets, and tanks which may be kept and other pet issues not conflicting with these CC&Rs. **Except as allowed by law, guests or invitees are not permitted to bring their animals or pets when they visit Residents in the Development**

This should be stated in your rules not CC&Rs because it is something that is very hard to police.

**9.2 Licensed and Neutered.** All dogs or cats must be spayed or neutered. All dogs must be licensed with the City. When the dog is outside the unit, it must wear the City license tag.

***We previously requested this provision. Is this no longer allowable?***

City laws change more frequently then your CC&Rs are updated. So its better to state this in your rules, which can be update whenever the law changes. Also this rule relies on the city providing these license tags. It is not something the Association has control over. The same analysis applies to spayed or neutered. The Association is not equip to enforce this rule. In addition, we are not sure it is legal.

**9.3 Size Limitation.** No dog which exceeds a weight of twenty-five (25) pounds ~~(use 50 pounds for townhomes)~~ is permitted. With proper documentation permitted by law, physically and/or mentally disabled individuals will be allowed to have an assistance/service dog over the weight limitation.

**9.4 Assistance Animals.** An animal otherwise prohibited by these CC&Rs, which is kept by a Resident for the purpose of servicing the Resident's qualified disability, may be kept by such Resident provided (i) the animal is properly cared for (i.e., kept healthy, clean, and properly groomed and waste material is properly disposed of) and not unruly or disruptive (e.g., barking, growling, running loose, displaying aggressive behavior, etc.); (ii) the Resident submits appropriate documentation to the Board verifying the animal provides a recognized service for the benefit of the person with the disability under the Fair Housing Act; and (iii) if the assistance animal is for a Guest or Visitor, the animal is on the premises only for the duration of the visit of the Guest w unless contrary to law.

The highlighted section (ii) probably conflicts with the law. Also this area of the law is changing frequently. In addition, the Association does not want to get into the business of verifying whether a guest has disability or service animal because that can lead to claims of discrimination by guest. We can a draft disability accommodation policy for the Association if you like, let us know.

**9.5 Nuisance.** The Board is authorized to prohibit any animal which, in its opinion, constitutes a nuisance to other Members pursuant to evidence provided at a noticed hearing. Pet or other animal owners shall be responsible for the prompt removal and proper disposal of animal wastes from their animals and shall be solely responsible for the conduct of the pet or other animal. Failure to do so (i.e., 'pick up after your pet') will constitute prima facie evidence of nuisance.

**Sections 9.5 through 9.8 of the 1<sup>st</sup> draft are renumbered and now beco**

The last highlight sentence was no added because it probably violates the members right to due process. Also it is legal term that applies in courts, not in Association violation hearings.

## **ARTICLE 10: VEHICLES AND PARKING**

**10.2 Restricted Parking.** Only the following types of licensed, registered, and operational vehicles are permitted to be parked ~~or stored~~ in parking spaces: automobiles, trucks, motorcycles, and mopeds. Vehicles must be parked completely within the parking space. No RV, camper, boat, recreational watercraft, trailer, or any other similar vehicle is permitted in any portion of the Common Areas or in any parking space.

See Section 10.8. So, "stored" will be "parked" in Draft 3.

**10.3 Commercial Vehicles.** Commercial vehicles, including pickup trucks one ton or larger, panel trucks, tow trucks, stake bed trucks, tank trucks, dump trucks, step vans, concrete trucks, taxis, buses, vans designed for 10 people or more, vehicles with commercial signage, and the like, are prohibited, except as provided in the Rules and Regulations. Notwithstanding the foregoing, temporary parking of commercial vehicles for the purpose of making deliveries or performing services shall be permitted in accordance with the Association Rules. Said service vehicles must be moved at any Owner's request if they are blocking access to an Owner's Unit, or are parked in a restricted No Parking Tow-Away Zone.

See Section 10.16 for impeding access. The details regarding deliveries and services should be stated in your rules not CC&Rs.

**10.4 Assigned Parking.** Each Member is assigned one (1) covered parking space for their exclusive use or that of their Tenants. The assigned covered parking areas shall be used only for parking conventional, registered passenger vehicles, mopeds and motorcycles by Owners, their tenants and guests and shall not be enclosed or otherwise used for storage or any other use. Unless prohibited by law, the Association is permitted to suspend such use at a disciplinary hearing due to delinquent assessments, unpaid fines or other charges, and repeated Governing Document violations. Each Member is solely responsible to ensure that each of his/her vehicle(s), or those of his/her Tenants, fits within the Member's assigned parking space.

The requested changes are redundant to Section 10.2 and 10.5 (which is added as requested below)

10.5 Parking Limitation. No Unit shall use more than two (2) parking spaces in the development without the prior written approval of the Board. No vehicle, tent or other equipment shall be used as living quarters or storage in any portion of the Common Areas or in any parking space.

10.6 Association's Right of Removal. Any officer of the Association or other person designated by the Board may authorize the removal of any motor vehicle, trailer or equipment parked or located within the Common Area in violation of this Declaration, the Association Rules or the California Vehicle Code. Such removal shall be at the expense of the owner of the motor vehicle, trailer or equipment.

***This addition changes the numbering of subsequent sections or provisions.***

This is an enforcement action and is covered by the title "Enforcement." So, if you want it specifically stated, we recommend you do so in your rules.

10.8 Registered and Proper Operating Condition. All vehicles parked or stored in the Development must be registered and maintained in proper operating condition, and not be a hazard or nuisance by noise, exhaust emissions, or appearance. All vehicles parked or stored in the Development must carry current operational license registration tags and must be insured. Unless authorized by the Board, the storage of unregistered or non-operational vehicles is not permitted.

10.10 Electric Vehicle Charging Stations. Members are permitted, with written approval of the Architectural Committee and/or Board, to install at their own expense an electric charging station compliant with Section 4745 of the Civil Code or any successor statute. Use of Association electricity to power a Member's electrical vehicle charging station is prohibited unless, following written approval of the Architectural Committee and/or the Board, the Member has installed an electrical submeter to track electricity usage, and the Member must pay the Association for all Association electricity used by the electrical vehicle charging station. The Association may impose reasonable requirements on the location and installation of the equipment. All electrical work must be done by a licensed electrician with appropriate permits from the Building Department.

10.15 Theft or Damage. All parking in the Development is at vehicle owner's risk. The Association is not liable for any loss or damage suffered by any Member, Tenant, or guest due to theft of or damage to any vehicle or vehicle contents, unless resulting from the Association's intentional misconduct or gross negligence.

The highlighted language is redundant to what is already stated in this section.

10.16 Impeding Access. Vehicles must not impede or prevent ready access to any door, gate, entrance, exit, sidewalk, walkway or firelane.

## ARTICLE 15: INSURANCE

15.2 Member Obligation to Carry Insurance. At their sole expense, Members must purchase insurance covering their personalty and property, including, without limitation: (i) real property and personal property coverage that insures their Separate Interest and its contents against damage or loss, including, but not limited to, all fixtures, components and Unit improvements within or appurtenant to the Separate Interest or Exclusive Use Common Area which are not covered by the Association's property damage policy; (ii) premises liability that includes protection for bodily injury and property damage; (iii) personal liability coverage, (iv) loss of use that protects a Member for additional living expenses should his/her Unit become uninhabitable due to a covered loss; (v) loss assessment coverage that protects against Special Assessments due to a loss which exceeds the Association's



master policy limits or deductible, (vi) master policy deductible coverage, and (vii) such other coverage as the Member deems appropriate. In addition, if a Member operates a vehicle which is driven across or **stored parked** in the Association's Common Areas, the Member must carry appropriate automobile insurance. The Association has no obligation to police this provision and is specifically relieved of any responsibility or liability from doing so or failing to do so.

## ARTICLE 16: PROTECTION OF LENDERS

**16.6 Curing of Breaches.** A Lender who acquires title to any Unit, pursuant to the remedies provided in the mortgage, through foreclosure of the mortgage, by deed in lieu of foreclosure, or otherwise shall not be obligated to cure any breach of these CC&Rs which is noncurable or of a type which is not practical or feasible to cure. For the purpose of this section, if a Lender acquires title by a deed in lieu of foreclosure, then delinquent Assessments owed on that Unit by a previous Member shall not be a noncurable breach or a breach which is not practical or feasible to cure and an Assessment lien on that Unit shall not be rendered invalid or unenforceable by virtue of the Lender's receipt of title to that Unit.

This is a statement of existing law and is not necessary because 1) the law may change before your CC&Rs are updated again and 2) it only protects the lender and not the Association or the members, so no reason to include it.

## ARTICLE 20: MISCELLANEOUS

**20.1 Notice of Airport and Railroad in Vicinity.** This property is presently located in the vicinity of an airport, within what is known as an airport influence area. **The property is also immediately adjacent to an active railroad.** For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport **or railroad** operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what **such** annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.